



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

EPA-HQ-OAR-2019-5304; FRL-9213-01-OAR

Notification of Completeness of the Department of Energy's Compliance Recertification Application for the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Plant 2019 Compliance Recertification Application is complete; end of comment period concerning the 2019 Compliance Recertification Application.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) has determined that the Department of Energy (DOE) 2019 Compliance Recertification Application (CRA) for the Waste Isolation Pilot Plant (WIPP) is complete. The EPA provided written notice of the completeness decision to the Department of Energy on November 17, 2021. The Agency has determined that the CRA is complete, in accordance with the, "Criteria for the Certification and Recertification of the WIPP's Compliance with the Disposal Regulations" (Compliance Certification Criteria). The EPA also gives notice of the end of the comment period relating to the CRA.

DATES: The EPA opened the public comment period after receipt of some documentation of continued compliance and before the completeness determination concerning the CRA and gave notice that the comment period would remain open until after the completeness determination to a date which would be specified later (84 FR 50367, September 25, 2019). Comments must be received on or before **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2019-5304**, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or

withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), or other information of which disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Ray Lee, Radiation Protection Division, Center for Radiation Information and Outreach, Mail Code 6608T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC, 20460; telephone number: 202-343-9463; fax number: 202-343-2305; e-mail address: lee.raymond@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside

of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions - The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

The WIPP is a disposal system for transuranic (TRU) radioactive waste. The WIPP Land Withdrawal Act, Public Law 102-579 (Oct. 30, 1972)¹ (LWA) imposed various conditions or

¹ The 1992 WIPP Land Withdrawal Act was amended by the “Waste Isolation Pilot Plant Land Withdrawal Act Amendments,” a part of the National Defense Authorization Act for Fiscal Year 1997. Pub. L 104-201, Title 31, Subtitle F (Sept. 23, 1996).

restrictions on the WIPP, including limiting radioactive waste disposal in the WIPP to TRU radioactive wastes generated by defense-related activities. The waste proposed for disposal at the WIPP derives from federal facilities across the United States, including locations in California, Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee and Washington. The LWA also provides that the DOE will submit information to the EPA to determine whether the WIPP complies with the Agency's final disposal regulations, 40 CFR part 191, subparts B and C (Disposal Regulations). This includes an initial determination or certification of compliance, and then subsequent, periodic recertifications of continued compliance. LWA § 8. Under the LWA, the periodic recertifications occur on a five-year cycle, beginning five years after the initial receipt of transuranic waste for disposal at the WIPP. LWA § 8(f)(1). The EPA promulgated the Compliance Certification Criteria to set out criteria for the certification and recertification of the WIPP's compliance with the Disposal Regulations. Among the criteria is the requirement that information submitted by the DOE shall be complete and accurate and a preliminary step for the EPA to determine and notify DOE, in writing, that a complete recertification application has been received. 40 CFR 194.11. The completeness determination is an administrative step; it does not imply in any way that the CRA demonstrates compliance with the Compliance Certification Criteria or the disposal regulations. The EPA is now engaged in the final technical review that will determine if the WIPP remains in compliance with the disposal regulations.

The DOE submitted its first documentation of continued compliance and request for recertification of the WIPP, typically referred to as a compliance recertification application, in March 2004. The DOE submitted the second compliance recertification application in March 2009 and the third in March 2014. In March 2019, the DOE submitted the CRA, its fourth, and currently pending compliance recertification application. In September 2019, after receipt of the CRA, the EPA gave notice of receipt of the CRA and requested comment on all aspects of the application. 84 FR 50367 (Sept. 25, 2019). The Agency indicated that the comment period would

remain open until a date after the EPA's completeness determination in accordance with § 194.11, a date that EPA would specify in a subsequent notice.²

After receiving the CRA, the EPA engaged in a preliminary review of the information submitted for completeness. The Agency's review identified multiple topics for which additional information was necessary to perform a technical evaluation. The EPA sent a series of letters to the DOE requesting additional information, and the Department provided documents and analyses in response to these requests. This completeness-related correspondence – along with other supporting documentation – is available in the Agency's public dockets (<https://www.regulations.gov>; Docket ID: EPA-HQ-OAR-2019-5304). Links to the electronic docket and additional information are also available at the EPA's WIPP website (<https://www.epa.gov/radiation/certification-and-recertification-wipp>).

In addition, since the opening of the public comment period on the 2019 CRA, the Agency has received 12 sets of public comments regarding the application and the recertification process in general. In addition to soliciting written public comments, the EPA held a virtual, informal public meeting in August 2021 to discuss stakeholders' concerns and issues related to recertification. All submitted public comments can also be referenced via <https://www.regulations.gov>; Docket ID: EPA-HQ-OAR-2019-5304.

In a letter dated November 17, 2021, from the EPA's Director of the Office of Radiation and Indoor Air to the Assistant Secretary of the Office of Environmental Management, Department of Energy, the Agency notified the DOE that the CRA for the WIPP is complete. This letter can be referenced via <https://www.regulations.gov>; Docket ID: EPA-HQ-OAR-2019-5304. This determination is solely an administrative measure and does not reflect any conclusion regarding the WIPP's continued compliance with the disposal regulations.

² For additional background information concerning the WIPP, the LWA, and periodic compliance recertification, see the September 25, 2019 notice of receipt and availability of the CRA and opening of the comment period. 84 Fed. Reg. 50367.

The EPA will now undertake a full technical evaluation of the complete 2019 CRA to determine whether the WIPP continues to comply with the Disposal Regulations. The Agency will consider relevant public comments and other information relevant to the WIPP's compliance. The Agency is most interested in whether new or changed information has been appropriately incorporated into the performance assessment calculations for the WIPP and whether the potential long-term effects of changes are properly characterized.

If the Agency approves the CRA, it will then serve as the baseline for the next recertification. As required by the WIPP LWA, the EPA will make a final recertification decision within six months of issuing the completeness determination letter to the Secretary of Energy. In accordance with the Compliance Certification Criteria, the Agency will seek to publish notice of EPA's recertification decision. 40 CFR 194.64.

Jonathan D. Edwards, Director,

Office of Radiation and Indoor Air.

[FR Doc. 2021-25590 Filed: 11/24/2021 8:45 am; Publication Date: 11/26/2021]